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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909

No. [redacted]47.

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THE STATE OF NORTH DAKOTA *EX REL.* R. E. FLAHERTY, PLAINTIFF IN ERROR,

vs.

O. G. HANSON, SHERIFF OF THE COUNTY OF GRAND FORKS, STATE OF NORTH DAKOTA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NORTH DAKOTA.

FILED DECEMBER 31, 1907.

(20,953.)

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SUPREME COURT OF THE UNITED STATES

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vs.

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IN ERROR TO THE SUPREME COURT OF THE STATE OF NORTH DAKOTA.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DECEMBER 5, 1908.

1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable The Judges of the Supreme Court of the State of North Dakota, Greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said Supreme Court of the State of North Dakota before you, or some of you, being the highest Court of law or equity of the said State in which a decision could be had in the said suit between the State of North Dakota, *ex rel*, R. E. Flaherty, Plaintiff in Error, and O. G. Hanson as Sheriff of the County of Grand Forks, in the State of North Dakota, Defendant, wherein was drawn in question the validity of a statute of, or an authority exercised under said State, on the ground of their being repugnant to the Constitution, Treaties, or Laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution, or Statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption established, set up, or claimed under said clause of the said Constitution, Treaty, Statute or Commission, a manifest error hath happened to the great damage of said R. E. Flaherty, as by his Complaint appears, should be duly corrected and full and speedy justice done to the parties aforesaid, in this behalf do command you if judgment be therein given that then under your seal, distinctly and openly, you send the records and proceedings aforesaid with all things concerning the same to the Supreme Court of the United States, together with this Writ, so that you have the same at Washington on the 28th day of December, 1907, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being in-

2 spected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller Chief Justice of the Supreme Court of the United States this 28th day of October in the year of our Lord One Thousand Nine Hundred and Seven.

[Seal Circuit Court of the United States, District of North Dakota.]

J. A. MONTGOMERY,
J. A. MONTGOMERY,
Clerk of the United States Circuit Court for the District of North Dakota.
By —— ——, *Deputy.*

Allowed by

D. E. MORGAN,
Chief Justice of the Supreme Court of the State of North Dakota.

Service of the within Writ of Error and the receipt of a copy thereof is hereby admitted this — day of October, 1907, at Grand Forks, North Dakota.

—— ——,

Attorney for Defendant in Error.

3 [Endorsed:] *In re* Flaherty. Writ of Error. 1667. Filed, in the Clerk's Office, Supreme Court, N. Dak. Oct. 30, 1907. R. D. Hoskins, Clerk. By —— ——, Deputy.

4 STATE OF NORTH DAKOTA, *ss:*

In the Supreme Court.

I, R. D. Hoskins, Clerk of the Supreme Court of the State of North Dakota, do hereby certify and return that pursuant to the before annexed Writ of Error in a case pending in the said Supreme Court of the State of North Dakota, wherein the State of North Dakota, *ex rel.* R. E. Flaherty, is plaintiff, and O. G. Hanson, as Sheriff of Grand Forks County, is defendant, that the annexed papers, being sheets numbered from one (1) to thirty-four (34), is a full, true, correct and complete copy of the proceedings and all of them had before the said Supreme Court of the State of North Dakota in the said entitled action and the same are hereby transmitted to the Supreme Court of the United States pursuant to said writ of error.

In witness whereof, I have hereunto set my hand and affixed the seal of the said Supreme Court of the State of North Dakota at Bismarck, this 17th day of December, A. D. 1907.

[Seal State of North Dakota, Supreme Court.]

R. D. HOSKINS,

Clerk of the Supreme Court, State of North Dakota.

5 To the Honorable the Judges of the Supreme Court of the State of North Dakota:

Your Petitioner, R. E. Flaherty, respectfully petitions and represents:

That he is imprisoned and restrained of his liberty by O. G. Hanson in the City of Grand Forks, Grand Forks County, North Dakota, the said Hanson being the Sheriff of said County and claiming to hold this petitioner in his custody as such Sheriff. That he, O. G. Hanson, is holding this petitioner in his custody under and by virtue of a pretended commitment, a copy of which is hereto annexed and marked Exhibit A, and is hereby referred to and made a part of this petition. That said commitment was on the 20th day of August, 1907, made and delivered to said O. G. Hanson, by J. R. Church, Police Magistrate for the City of Grand Forks acting at the request and during the absence of P. McLoughlin, Justice of the Peace in and for said Grand Forks County, North Dakota, at the conclusion of a preliminary hearing after this petitioner had been arrested and brought before said magistrate upon a complaint charging this peti-

tioner with having committed the pretended crime of neglecting to register and publish a receipt for the payment of internal revenue taxes to the United States being the pretended crime which the Legislature of the State of North Dakota intended to define and create by that certain act of said Legislative assembly at the session for the year 1907, entitled "An act providing for the publication and registration of special tax receipts or licenses from the Government of the United States to sell distilled malt and fermented liquors, issued to persons in North Dakota, the payment and collection of registration fees and publication fees, regulating the posting and exhibiting of such tax receipts or licenses, prescribing the duties of officials, owners and lessors of property in relation thereto, prescribing penalties for failure to perform the duties prescribed, and other regulations pertaining to the sale of intoxicating liquors," and approved March 13th, 1907. A copy of the complaint filed before said magistrate accusing this petitioner of said alleged crime is hereunto attached marked Exhibit B, and is hereby referred to and made a part of this petition.

Your Petitioner respectfully represents that he is advised and verily believes that said imprisonment and restraint are unlawful in this: that said act of the Legislature purporting to create and define the alleged crime for which this petitioner has been bound over to the District Court is void, and in excess of the power of the legislative assembly of the State of North Dakota in this: that it conflicts with the Constitution and Laws of the United States, and particularly those laws of the United States relating to the payment of internal revenue taxes upon the business of selling of malt, fermented and distilled liquors.

That in all the proceedings hereinbefore referred to, this petitioner is therein named and referred to as R. C. Flarty, but that his true name is R. E. Flaherty.

That heretofore and on this 20th day of August, 1907, your petitioner duly presented an application in substantially the form hereof *the* the Honorable, the Judge of the District Court of the First Judicial District of the State of North Dakota and asked that a writ of *habeas corpus* be issued by said District Court for the purpose of inquiring into and determining the lawfulness of your petitioner's imprisonment aforesaid, and to the end that your petitioner might be liberated from said unlawful restraint, which said application was by the said District Court denied.

Your petitioner therefore prays that this Honorable Court issue or cause to be issued a writ of *habeas corpus* to the end that your petitioner will be brought before this Court, and the lawfulness of said imprisonment be inquired into and that this petitioner be set at liberty, and the proceedings before said committing magistrate be held for naught.

Dated this 20th day of August, 1907.

(Signed) R. E. FLAHERTY.

Subscribed and sworn to before me this 20th day of August, 1907.

[NOTARIAL SEAL.] (Signed) CHARLES J. MURPHY,
Notary Public, Grand Forks County, N. Dak.

EXHIBIT "A."

STATE OF NORTH DAKOTA,
County of Grand Forks, ss:

An Examination in Justice Court, Before P. McLoughlin, Justice of the Peace.

STATE OF NORTH DAKOTA
against
R. C. FLARTY.

The State of North Dakota to the Sheriff of the County of Grand Forks:

An order having been this day made by me that the above named Defendant, R. C. Flarty, be held to answer upon a charge of neglecting to register and publish a government receipt for payment of internal revenue tax on the business of a retail dealer in malt liquors. Bail fixed in the sum of $300.00.

You are hereby commanded to receive him into your custody, and detain him until he is legally discharged.

Given under my hand at Grand Forks, N. D., this 20th day of August, A. D. 1907.

J. R. CHURCH,
Police Magistrate, City of Grand Forks, Acting at the Request of P. McLoughlin in the Latter's Absence.

8 EXHIBIT "B."

STATE OF NORTH DAKOTA,
County of Grand Forks, ss:

Justice Court, Before P. McLoughlin, Justice of the Peace.

J. B. Wineman being first duly sworn and examined on oath, makes complaint and says that R. C. Flarty did on the First day of August, A. D. 1907, in said County and State, commit the crime of neglecting to register and publish special tax License from the Government of the United States, committed as follows, to-wit: That at the said time and place the said R. C. Flarty being then and there in the business of selling distilled, malt and fermented liquors in a certain building situate on lot 5 of Block 10 in the Village of McCanna in said County, and having in his possession a Special Tax License from the Government of the United States to sell distilled, malt and fermented liquor for a period of (12) Months ending June 30th, 1908, did unlawfully neglect to file a duly authenticated copy of the same with the County Auditor of the County of Grand Forks; and the said R. C. Flarty did unlawfully neglect to cause the fact of his having such special Tax License to be published in the official

Newspapers of the County of Grand Forks as required by the provisions of House Bill # 195 of the session laws of the State of North Dakota for the Year 1907, approved March 13th, 1907, this contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State of North Dakota; and prays that the said R. C. Flarty may be arrested and dealt with according to law.

J. B. WINEMAN.

Subscribed and sworn to before me, this 5th day of August, A. D. 1907.

P. McLOUGHLIN,
Justice of the Peace, Grand Forks County, N. D.

9 I hereby certify that the foregoing is a true copy of the original complaint in above entitled case now on file in my office.

P. McLOUGHLIN,
Justice of the Peace, Grand Forks Co., N. D.

(Endorsed:) In Justice Court, County of Grand Forks. The State of North Dakota against R. C. Flarty. Complaint. Filed in my office the 5 day of Aug. A. D. 1907. P. McLoughlin, Justice of the Peace.

(Petition for writ endorsed:) Petition for Writ. 1667. Filed in the Clerk's Office, Supreme Court, N. Dak., Aug. 24, 1907. R. D. Hoskins, Clerk.

10 In the Supreme Court, State of North Dakota.

STATE OF NORTH DAKOTA *ex Rel.* R. E. FLAHERTY, Plaintiff,
versus
O. G. HANSON, as Sheriff of Grand Forks County, North Dakota, Defendant.

The State of North Dakota to the Sheriff of Grand Forks County:

You are hereby summoned to have the body of R. E. Flaherty by you imprisoned and detained as is alleged, together with the time and cause of such imprisonment and detention, by whatever name the said R. E. Flaherty shall be called or charged, before the Supreme Court of the State of North Dakota at the Chambers of said Court in the City of Grand Forks, Grand Forks County, North Dakota, forthwith upon receipt of this writ, to do and receive what shall then and there be considered concerning the said R. E. Flaherty and have you then and there this writ.

Witness the Honorable D. E. Morgan, Chief Justice of the Supreme Court of the State of North Dakota, at Grand Forks, Grand Forks County, North Dakota, this 20th day of August, 1907.

(Signed) D. E. MORGAN,
Chief Justice of Supreme Court.

By the *Habeas Corpus* act.

Due service of above writ this 20th day of August, 1907, is hereby admitted.

(Signed) O. G. HANSON, *Sheriff.*

(Endorsed:) In the Supreme Court, State of North Dakota. Original. State *ex rel.* R. E. Flaherty, Plaintiff, *vs.* O. G. Hanson, Sheriff, Defendant. Writ of *Habeas Corpus*. By the *Habeas Corpus* Act. 1667. Filed in the Clerk's Office, Supreme Court, N. Dak. Aug. 24, 1907. R. D. Hoskins, Clerk.

11

In the Supreme Court, State of North Dakota.

STATE OF NORTH DAKOTA *ex Rel.* R. E. FLAHERTY, Plaintiff,
versus
O. G. HANSON, as Sheriff of Grand Forks County, North Dakota, Defendant.

Return to Writ of Habeas Corpus.

Now comes the defendant above named and for answer and return to the writ of *Habeas Corpus* issued herein and served this 20th day of August 1907, states and shows to the court that he now has the said R. E. Flaherty in his custody and under his power. That said Flaherty was committed and given into the custody of the defendant as sheriff aforesaid on the 20th day of August 1907 under and by virtue of the proceedings and commitment referred to and described in the petition for *Habeas Corpus* filed herein. That copy of petition mentioned with copy of said commitment and complaint against said Flaherty attached thereto are hereto attached and made part of this return.

And the undersigned now produces and brings before this court the body of said R. E. Flaherty.

Dated this 20th day of August, 1907.

(Signed) O. G. HANSON,
Sheriff of Grand Forks, N. D.,
By ODIN OVERBY, *Deputy.*

12

(Endorsed:) Return to Writ. 1667. Filed in the Clerk's Office, Supreme Court, N. Dak. Aug. 24, 1907. R. D. Hoskins, Clerk.

In the Supreme Court, State of North Dakota.

STATE OF NORTH DAKOTA *ex Rel.* R. E. FLAHERTY, Plaintiff,
versus
O. G. HANSON, as Sheriff of Grand Forks County, North Dakota, Defendant.

Application for Bail.

The undersigned, plaintiff above named, respectfully represents that he is in the custody of the defendant as sheriff of said Grand

Forks County and is restrained of his liberty. That he is informed and believes that the question as to the legality and lawfulness of plaintiff's arrest and detention cannot be determined at this time by this court and that some weeks will necessarily elapse before a decision can be reached in said matter.

Plaintiff therefore asks that an order be entered herein admitting him to bail pending the final hearing and determination of this action.

Dated this 20th day of August, 1907.

(Signed) R. E. FLAHERTY.

Subscribed and sworn to before me this 20th day of August, 1907.

[NOTARIAL SEAL.] (Signed) CHARLES J. MURPHY,
Notary Public, N. D.

13 *Order.*

Upon the application of plaintiff and good cause shown it is hereby ordered that the plaintiff, R. E. Flaherty be released from the custody of defendant and set at liberty pending the final hearing and determination of this action, upon his executing and delivering and filing with this court a bond with good and sufficient surety conditioned that he will abide the final judgment of this court in the premises and surrender himself to the custody of the defendant promptly in the event this court shall hold that his arrest and imprisonment involved in this action are lawful. Said bond shall be in the sum of $500.00.

Dated this 20th day of August, 1907.

(Signed) D. E. MORGAN,
Chief Justice Supreme Court.

In the Supreme Court, State of North Dakota.

STATE OF NORTH DAKOTA *ex Rel.* R. E. FLAHERTY, Plaintiff,
versus
O. G. HANSON, as Sheriff of Grand Forks County, North Dakota, Defendant.

Bail Bond.

The above named R. E. Flaherty having been arrested upon a warrant issued by P. McLoughlin, Justice of the Peace of Grand Forks County North Dakota upon the charge of having violated the provisions of chapter 189 laws of 1907 of the state of North Dakota, being an act of the legislative assembly of said state providing for the publication and registration of special tax re-
14 ceipts or licenses from the government of the United States to sell distilled, malt and fermented liquors, issued to persons in North Dakota, and covering other subjects and regulations with reference to such licenses and the business of persons engaged

in the sale of intoxicating liquors, and upon preliminary hearing on said charge before J. R. Church Police Magistrate of the City of Grand Forks acting at the request of and during the absence of said McLoughlin having been committed to the custody of defendant upon said charge; and a writ of *habeas corpus* having been issued upon the application of the undersigned against said defendant returnable before the above named court on this 20th day of August, 1907, the same having been duly served and said defendant having made due return pursuant thereto and produced this defendant in court; and the final determination of the matters involved in said *habeas corpus* action having been deferred pending consideration thereof by the court, and upon the application of the undersigned said court having entered an order herein admitting this plaintiff to bail, upon proper bond being executed and filed, pending decision in said *habeas corpus* proceeding.

Now therefore we R. E. Flaherty and W. S. Whitman of Grand Forks as surety, jointly and severally undertake that said R. E. Flaherty will abide the final order and judgment of this court made in this action, and will at all times hold himself amenable to the orders and process of this court, and that said Flaherty shall, in event this court shall finally hold and determine that his arrest and imprisonment complained of in this action are lawful, at once surrender himself to the custody of defendant, or if he fails to perform either of these conditions that he will pay to the State of North Dakota the sum of five hundred dollars.

Dated this 20th day of August, 1907.

(Signed) R. E. FLAHERTY,
(Signed) W. S. WHITMAN.

15 STATE OF NORTH DAKOTA,
County of Grand Forks, ss:

On this 20th day of August 1907 before me a Notary Public in and for said County and State personally appeared R. E. Flaherty known to me to be the same person described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

[NOTARIAL SEAL.] (Signed) CHARLES J. MURPHY,
Notary Public, N. D.

STATE OF NORTH DAKOTA,
County of Grand Forks, ss:

On this 20th day of August 1907 before me, a Notary Public in and for said County and State, personally appeared W. S. Whitman known to me to be the same person described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

[NOTARIAL SEAL.] (Signed) FRED S. DUGGAN,
Notary Public, N. D.

STATE OF NORTH DAKOTA,
County of Grand Forks, ss:

W. S. Whitman being first duly sworn says that he is a resident and freeholder of the state of North Dakota and worth the sum of five hundred dollars over and above all his debts and liabilities and exclusive of his property exempt from execution.

(Signed) W. S. WHITMAN.

Subscribed and sworn to before me this 20th day of August 1907.

[NOTARIAL SEAL.] (Signed) FRED S. DUGGAN,
Notary Public, N. D.

My Commission Expires Oct. 15, 1908.

The above bond is hereby approved.

(Signed) D. E. MORGAN,
Chief Justice Supreme Court.

16 (Endorsed:) Order for bail and undertaking. 1667. Filed in the Clerk's Office, Supreme Court, N. Dak., Aug. 24, 1907. R. D. Hoskins, Clerk.

17 Extract from Minute Record of Supreme Court.

BISMARCK, N. DAK., *Oct. 15th*, 1907.

Now the court directed the entry of the following order:

File No. 1667.

STATE OF NORTH DAKOTA *ex Rel.* R. E. FLAHERTY, Plaintiff,
vs.
O. G. HANSON, as Sheriff of Grand Forks County, Defendant.

Ordered, That the writ of *habeas Corpus* heretofore issued be and the same is hereby quashed and the said R. E. Flaherty is remanded to the custody of the sheriff of Grand Forks county to be by said sheriff held in custody under the terms of his original commitment as issued by J. R. Church, Police Magistrate of the City of Grand Forks, of date Aug. 20th, 1907.

* * * * * * *

18 STATE OF NORTH DAKOTA:

In Supreme Court, September, 1907, Term.

STATE OF NORTH DAKOTA *ex Rel.* R. E. FLAHERTY
vs.
O. G. HANSON, as Sheriff of Grand Forks County.

The constitutionality of Chap. 189 of the laws of 1907 of this state requiring the registration and publication of internal revenue tax receipts is assailed upon the grounds:

1. That it is obnoxious to that provision of the United States Constitution (Art. 6) which declares that the constitution and the laws of the United States which shall be made in pursuance thereof shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.

2. That it violates secs. 11 and 20 of the state constitution prohibiting special legislation, and

3. That it infringes sec. 13 of the state constitution which guarantees immunity from self crimination.

Held, for reasons stated in the opinion, that the act is not vulnerable to any of the objections urged against it.

The exercise by Congress of the power to tax a business or occupation delegated to it by the federal constitution, and the prescribing of regulations to aid the government in collection of such tax, in no manner curtail or interfere with the exercise by the respective states of their undoubted right under their police power to regulate or entirely prohibit the business or occupation thus taxed, because in its judgment such business or occupation is deemed injurious to the public morals, the public health or the public safety.

19 The power of the state to protect its citizens from the evils of intemperance, to enact and enforce any legislation not in conflict with the federal or state constitution, which it deems advisable or necessary for the safe-guarding of the public morals and the preservation of the public health, is not only an attribute of sovereignty but a power inherent in statehood. In all maters relating to the life, liberty and property of the citizen, the state is sovereign, so long as it does not conflict with the federal constitution.

The act in question which requires publicity to be given of the fact of the payment of such government tax is a legitimate exercise by the state legislature of the police power of the state as it tends to aid in the enforcement of the law against the unlawful traffic in intoxicating liquors.

The manifest object of the law was to aid in the better enforcement of the state statute against the business of the unlawful selling of intoxicating liquors, and not, as petitioner contends, to add to or supplement the regulations of Congress upon the subject of taxing such business, and while the necessary effect of the state law may be to indirectly curtail or decrease the revenues to the general government under the act of Congress, this is not a valid objection to the law. The legitimate exercise of this power is in no manner curtailed by the fact that the same may incidentally deprive the government of some of its revenue.

In construing a statute, the courts will, if possible, give effect to the manifest intent of the legislature as disclosed by the provisions of the whole act although in so doing it becomes necessary to disregard the strict letter of the law in some of its provisions. Applying this rule of construction it is held that the act in question applies to all persons in the state who have paid the government tax imposed upon the business of a retail dealer in distilled, malt and

fermented liquors, although they have violated the require-
20 ment of Congress with reference to the posting of the receipt for the payment of such tax, and hence, petitioner's contention that the act in question is special legislation is overruled.

(*Syllabus by the Court.*)

Petitioner, after a preliminary examination, was committed, in default of bail, to answer to the charge of violating the provisions of Chap. 189, Laws 1907 and has sued out a writ of *hapeas corpus* in this court to regain his liberty, alleging the unconstitutionality of said chapter.

Writ quashed.

Engerud, Holt & Frame, for petitioner.

J. B. Wineman, States Att'y of Grand Forks county, for respondent.

FISK, *J.*:

The petitioner, who claims to be unlawfully deprived of his liberty by virtue of a commitment issued by the police magistrate of the city of Grand Forks to the sheriff of Grand Forks county, made application to the Hon. Charles F. Templeton, judge of the district court of the First Judicial District, for a writ of *habeas corpus* to regain his liberty. This application having been denied he made a like application to this court. A writ was issued as prayed for and from the petition and return thereto it appears that the petitioner is restrained of his liberty under a commitment issued by such police magistrate committing him to the custody of the said sheriff, in default of bail, to answer to the charge of neglecting to register and publish a receipt issued to him by the government of the United States for the payment of the internal revenue tax upon the occupation of a retail dealer in distilled, malt and fermented liquors.

The sole ground urged by petitioner for the issuance of the
21 writ prayed for is that the act in question (being chap. 189 of the laws of 1907 of this state requiring the registration and publication of such receipt) is unconstitutional and void. He asserts that said act is in conflict with the constitution and laws of the United States, and particularly those laws relating to the payment of internal revenue taxes upon the business of selling malt, fermented and distilled liquors, his contention being that the act in question is void; 1. Because it is obnoxious to that provision of the United States constitution (Art. 6) which declares that the constitution and the laws of the United States which shall be made in pursuance thereof shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.

2. Because it violates secs. 11 and 20 of the state constitution prohibiting special legislation, and,

3. It infringes sec. 13 of the state constitution which guarantees immunity from self crimination.

We think petitioner's contention clearly untenable upon each ground urged by him. His first ground is predicated upon the erroneous theory that the act in question attempts to prescribe regulations governing the subject of the issuance of such tax receipt in addition to those regulations prescribed by congress. Such is not the scope nor intent of the act, as we construe it, but on the contrary, the obvious purpose sought to be accomplished by its enactment was to furnish knowledge to the public and all concerned of the fact that the persons who have paid such tax to the government are or may become engaged in the business of selling intoxicating liquors contrary to the laws of this state. Its purpose, in other words, was solely to furnish knowledge to aid in the enforcement of our statute against the unlawful traffic in intoxicating liquors. That the legislature has the undoubted right, within the police power of the state, to
22 enact a law prescribing reasonable regulations looking to this end is too well settled to require the citation of authority.

Counsel for petitioner does not question such right, but, in effect, contend that in the enactment of the statute in question the legislature did not assume to act within such police power of the state, but merely sought to add to regulations prescribed by congress upon a subject within the exclusive power of the latter. The fallacy of this argument becomes apparent upon an examination of the law in question, from which it is very clear that the evident object in view in enacting the same was as above stated.

It is not questioned, and indeed cannot be questioned, that the purpose of congress in the act aforesaid, was solely to raise revenue for the general government by imposing such tax, and the regulations prescribed by congress with reference to posting such receipts were merely for the purpose of effectuating such object. Congress, therefore, in imposing such tax and in prescribing regulations requiring the posting of such receipts acted solely within its power to tax, while the legislature, in enacting the law in question, acted solely within the police power of the state.

Among the powers expressly delegated to congress by the federal constitution is the power to tax, and this power, of course, carries with it the power to prescribe necessary and reasonable regulations to enable it to carry out such express powers. On the other hand, the police power, so-called, within the limits of the respective states, is exclusively vested in the legislature of such states. Neither government can, directly or indirectly, interfere with the other in the exercise of functions exclusively belonging to it. It does not follow that because congress has been given the power to tax a business or occupation that the states, through the exercise of their police power, cannot regulate or entirely prohibit such business or occu-
23 pation, although the necessary effect thereof might be to cut off or materially decrease such revenue to the general government. In other words, the taxing power of the government and the regulations prescribed by congress in relation thereto, in no manner curtail or interfere with—nor were they intended to curtail or interfere with the exercise by the states of their undoubted police powers. This is not denied, but petitioner contends, as before stated,

that the act in question, instead of having for its object the suppression of the liquor traffic, in effect operates to enlarge or add to the regulations prescribed by congress with reference to the publicity of such tax receipts. Counsel for petitioner say: "The act does not purport to regulate the dealing in intoxicating liquors. It assumes only to require those who pay the United States special tax to comply with other and different conditions than those imposed and required by congress." Again they say: "The North Dakota legislature deemed this congressional regulation insufficient and have assumed to supplement it by adding further requirements in order to give greater publicity." In this consists the fallacy of petitioner's contention. The legislature, in enacting this law, merely did what it had the unquestioned right to do under the police power of the State. Such power is very broad and is limited only by the constitution and laws of the United States and the constitution of this state. That the legislature has the right, within the police power of the state, to provide that the possession of an internal revenue tax receipt for the payment of the government tax upon the occupation of retail dealer in fermented and distilled liquors shall constitute *prima facie* evidence that the possessor is violating or has violated the prohibition law of this state is too well settled to admit of serious doubt. 23 Cyc. 255 and cases cited—Yet such a law is no less free from the objection urged by petitioner's counsel than is the act in question. If such a law is constitutional, then why cannot the legislature also enact a law making it a public offense for any
24 citizen of the state to procure such a receipt and neglect or refuse to furnish a public record thereof, and to give the most complete publicity to the fact of its issuance? Such a law would certainly have a tendency to aid in the better enforcement of the law against such illegal traffic, and we are aware of no provision, either in the federal constitution or statutes or in the constitution of the state, which directly or impliedly prohibits such legislation. Petitioner's counsel urge that congress has declared what the duties of a taxpayer are with reference to making public the fact of the issuance of such internal revenue receipts and that the state cannot add to or detract from such duties. They say: "It cannot attach greater burdens or more onerous consequences on the paying of such federal tax than congress has seen fit to prescribe." This is all very true, but the fallacy of this argument consists in the erroneous assumption, as before stated, that by the act in question the state has attempted to add other duties to the taxpayer, as such, with reference to his compliance with the federal statute. The reasoning of counsel, if carried to its logical end, would inevitably lead to the erroneous theory that congress, by the act imposing such tax and prescribing regulations to aid in the collection thereof, has thereby deprived the states of the exercise of their inherent police powers to regulate or prohibit the business thus taxed because of the fact that the exercise of such police powers may tend in some degree to interfere with the operation of such federal tax law by discouraging persons from complying therewith. As before observed, congress has not attempted by the imposition of this tax, nor by the enactment of regulations to aid in its collection, to in any manner in-

terfere with or limit the states in the enactment and enforcement of such laws as they may deem necessary under their police powers to either regulate or entirely prohibit the business thus taxed. On the contrary, congress has no such power delegated to it by the
25 constitution. The power to tax and the incidental power to make regulations to aid in the collection of such tax does not in the least interfere with the police power of the state to regulate or prohibit the business thus taxed.

The other grounds urged why the act should be declared unconstitutional are, we think, wholly devoid of merit. To say that the law is special legislation is equivalent to saying that because all persons who engage in the business of selling intoxicating liquors do not comply with the federal statute by the payment of the government tax, that the legislature is powerless is prescribe regulations for those who do pay such tax. In other words, that because a certain class of citizens may choose to violate the federal tax law by not paying the tax or otherwise complying with the regulations of Congress with reference to posting the tax receipt, that the legislature is powerless to legislate as to the class who do comply with such law. If this argument be sound then the mere fact that there exists two classes of persons engaged in the business of selling intoxicating liquors in this state, viz.: those who have complied with the federal law and those who have not, makes it impossible for the legislature to deal with either class. Such contention cannot be upheld. The legislature had a right to assume that all persons engaging in the business of selling intoxicating liquors would comply with the federal law, and in any event they had a right to treat such persons in one class and to prescribe reasonable regulations for their observance. If this cannot be done, then the large number of persons coming within such class would be free from legislative regulation or control simply for the reason that a certain class of persons do not come within the terms of the act because of their violation of the federal law.

The argument of petitioner's counsel to the effect that the act applies only to those persons who have complied with the federal statute with reference to posting the receipts for the payment of such tax is, we think, unsound. While sec. 2 of the act when given
26 a literal construction and without considering the other portions of the act would appear to sustain petitioner's contention in this respect, we think it apparent that when the whole act is construed together the legislative intent that the same shall apply to all who have *paid* the federal tax is apparent, and such intent must to given effect. That the court in construing a statute must give effect, if possible, to the spirit and intent of the act so as to effectuate the object sought to be accomplished by the legislature even though such construction may not seem warranted by the strict letter of its language, is well settled. Vermont Loan & Trust Co. *v.* Whitbed, 2 N. D. 82; Intoxicating Liquor Cases, 25 Kan. 751; Boyle *v.* Northwestern Mutual Relief Ass'n, (Wis.) 70 N. W. 351; 26 Am. & Eng. Encyc. of L. 602 and cases cited. In Vermont Loan & Trust Co. *v.* Whitehed, *supra*, at p. 101, Judge Bartholomew, in disposing of the question of the power of the court to place a limitation upon the

language employed by the legislature in order to give effect to the evident object sought to be accomplished by the act, quoted approvingly from the decisions of other courts as follows: "In construing an instrument the true intention of the framers must be arrived at, if possible, and, when necessary, the strict letter of the act, instrument or law, must yield to the manifest intent." "Effects and consequences of a construction are to be considered, and, when, from a literal interpretation, an effect would follow contrary to the whole intent and spirit of the statute, the intent and not the literal meaning must be regarded." "Whenever such intention can be discovered it ought to be followed with reason and discretion in the construction of the statute, although such construction seems contrary to the letter of the statute." Sec. 1 of the act by its terms expressly requires every receipt, stamp or license showing the payment of the special tax levied under the laws of the United States to be registered and published, and if petitioner's contention is sound as to the construction to be given sec. 2, then these two sections are conflicting. We are convinced, from a consideration of the
27 whole act that the same was intended to apply alike to all persons in this state having in their possession such receipt whether the same has been posted or not in compliance with the federal statute, and therefore that the act is not vulnerable to the objection that it is special legislation.

Petitioner's last ground of objection to the validity of the law is that it infringes sec. 13 of the constitution of this state which guarantees immunity from self crimination. We are unable to see any force to this contention. It is certainly legitimate for the legislature, under its police power, to require the utmost publicity in this respect to the end that a law prohibiting a business injurious to the public welfare may be strictly enforced. In State *v.* Donovan, 10 N. D. 203, this court held that it was not an infringement of this section of the constitution to permit the introduction in evidence of the public record of sales which a druggist holding a permit is required to keep by sec. 9359 of the Rev. Codes. Counsel's contention in the case at bar would, in effect, lead to the conclusion that the above section, requiring the druggist to keep such record, is unconstitutional as being violative of the constitutional provision guaranteeing immunity from self crimination. And the same reasoning, if sound, would also render void the provision of our code (sec. 9383) making the fact that any person has or keeps posted such internal revenue receipt *prima facie* evidence that such person is guilty of keeping for sale and selling intoxicating liquors contrary to law. We cannot yield our assent to such a doctrine.

Our conclusion is that the act in question is not vulnerable to any of the objections urged against it by petitioner's counsel. The writ is accordingly quashed.

All concur.

(Signed) C. J. FISK.
(Signed) B. F. SPALDING.
(Signed) D. E. MORGAN.

(Endorsed:) File No. 1667. *In re* Flaherty. Opinion of Court. Filed in Court this 15 day of Oct. 1907. R. D. Hoskins, Clerk.

28 In the Supreme Court of the State of North Dakota.

STATE OF NORTH DAKOTA *ex Rel.* R. E. FLAHERTY, Plaintiff in Error,

vs.

O. G. HANSON, as Sheriff of the County of Grand Forks, in the State of North Dakota, Defendant.

To the Honorable D. E. Morgan, Chief Justice of the Supreme Court of the State of North Dakota:

Now comes R. E. Flaherty, the above named relator and plaintiff in error, by his attorneys Edward Engerud, Daniel B. Holt and John S. Frame, and complains and alleges, that he is a citizen of the United States of America and a resident of the State of North Dakota; that in the above entitled matter on the 15th day of October, 1907, final judgment was rendered and entered against your petitioner by the Supreme Court of the State of North Dakota, that being the highest Court of law or equity in said State of North Dakota, wherein and whereby it was adjudged that the provisions of Chapter 189 of the General Laws of 1907 in and for the State of North Dakota, entitled "An Act Providing for the Publication and Registration of Special Tax Receipts or Licenses from the Government of the United States to sell Distilled, Malt and Fermented Liquors, Issued to Persons in North Dakota, the Payment and Collection of Registration Fees and Publication Fees, Regulating the Posting and Exhibiting of Such Tax Receipts or Licenses, Prescribing the Duties of Officials and Owners and Lessors of Property in Relation Thereto, Prescribing Penalties for Failure to Perform the Duties Prescribed and Other Regulations Pertaining to the
29 Sale of Intoxicating Liquors," is not in conflict with that part of Article Six (6) of the Constitution of the United States, which declares that the Constitution and the Laws of the United States which shall be made in pursuance thereof, shall be the supreme law of the land and the Judges in every state shall be bound thereby, anything in the Constitution or Laws of any State to the contrary notwithstanding, and in which final judgment it was held and adjudged that the provisions of said Act of the North Dakota Legislature does not impede, interfere with, supplant or affect the operation or supremacy of the Laws of the United States relating to, or regulating the collection of the Internal Revenue Taxes upon the business of dealing in liquors.

All of which appears in the record, opinion and final judgment of said Supreme Court discharging the Writ of *Habeas Corpus* therein, and remanding your petitioner to the custody of the Sheriff of Grand Forks County, the respondent herein, whereby manifest error has happened to the great damage and prejudice of your petitioner.

Your Petitioner, therefore, prays for the allowance of a Writ of Error from the Supreme Court of the United States to the Supreme Court of North Dakota and the Judges thereof, to the end that the record in said matter may be removed into the Supreme Court of the United States, and the error complained of by your petitioner, may be examined and corrected and said judgment reversed and your petitioner discharged; and your petitioner will ever pray.

(Signed) EDWARD ENGERUD.
(Signed) DANIEL B. HOLT.
(Signed) JOHN S. FRAME.

30 In the Supreme Court of the State of North Dakota.

STATE OF NORTH DAKOTA *ex Rel.* R. E. FLAHERTY, Plaintiff in Error,

vs.

O. G. HANSON, as Sheriff of the County of Grand Forks, in the State of North Dakota, Defendant.

The above entitled matter coming on to be heard upon the petition of the Plaintiff in Error therein for a Writ of Error from the Supreme Court of the United States to the Supreme Court of the State of North Dakota and upon examination of said petition and the record in said matter, and desiring to give the petitioner an opportunity to present in the Supreme Court of the United States the questions presented by the record in said matter,

It is ordered, that a Writ of Error be, and is hereby allowed to this Court from the Supreme Court of the United States;

And the petitioner having presented a proper bail bond conditioned according to law to hold himself answerable to, and to abide by the final determination of this matter by the Supreme Court of the United States, which bond has been approved.

It is further ordered, that the petitioner be released from custody and remain at large pending the final determination of said matter by the Supreme Court of the United States, or until further orders of that Court.

Dated at Bismarck, North Dakota, this 26th day of October, 1907.

(Signed) D. E. MORGAN,
Chief Justice of the Supreme Court of the State of North Dakota.

31 In the Supreme Court of the State of North Dakota.

STATE OF NORTH DAKOTA *ex Rel.* R. E. FLAHERTY, Plaintiff in Error,

vs.

O. G. HANSON, as Sheriff of the County of Grand Forks, in the State of North Dakota, Defendant.

Assignments of Error.

Comes now R. E. Flaherty and in connection with his petition for a Writ of Error from the Supreme Court of the United States to the Supreme Court of the State of North Dakota in the above entitled proceeding submits that in the record, proceedings, decision and final judgment of the said Supreme Court of the State of North Dakota in the above entitled matter there is manifest error in this:

First. In holding and deciding that the provisions of Chapter 189 of the General Laws of 1907, in and for the laws of the State of North Dakota, were enactments made in the proper exercise of the police power of said State of North Dakota.

Second. In holding that the provisions of said Act of the North Dakota Legislature do not add to, interfere with or supplement the regulations of Congress in the matter of taxing dealers in malt, distilled or fermented liquors and is not therefore violative of Article Six (6) of the Federal Constitution, which declares that the Constitution of the United States and the laws of Congress passed thereto are the Supreme Laws of the land.

For these reasons the Plaintiff in Error prays that the judgment of the Supreme Court of the State of North Dakota in said matter be reversed and proceedings and commitment under color of which the Plaintiff in Error has been deprived of his liberty be set
32 aside and held for naught.

(Signed) EDWARD ENGERUD.
(Signed) DANIEL B. HOLT.
(Signed) JOHN S. FRAME.

(Endorsed:) In Supreme Court, State of North Dakota. *In Re* Flaherty. Petition for and Order allowing Writ of Error and Assignments of Error. 1667. Filed in the clerk's Office, Supreme Court, N. Dak. Oct. 30, 1907. R. D. Hoskins, Clerk.

33 In the Supreme Court of the State of North Dakota.

STATE OF NORTH DAKOTA *ex Rel.* R. E. FLAHERTY, Plaintiff in Error,

vs.

O. G. HANSON, as Sheriff of the County of Grand Forks, in the State of North Dakota, Defendant.

Bond.

Know all men by these presents, that we, R. E. Flaherty, as principal, and W. P. Porterfield and Addison Leech as sureties, are held and firmly bound unto the State of North Dakota in the sum of Five Hundred Dollars ($500) to be paid to the State of North Dakota, to the payment of which sum well and truly to be made we bind ourselves, and each of our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals and dated this 24th day of October, 1907.

Whereas, the above named Plaintiff in Error has prosecuted a Writ of Error in the Supreme Court of the United States to reverse the judgment rendered in the above entitled proceeding by the Supreme Court of the State of North Dakota,

Now, therefore, the condition of this obligation is such that if the said above bounden R. E. Flaherty shall appear and surrender himself to the District Court of the State of North Dakota, First Judicial District, in and for Grand Forks County, forthwith upon the receipt by him or his attorneys of a final decision of the Supreme Court of the United States upon this Writ of Error, in the event that such decision shall dismiss the Writ of Error or affirm the decision and judgment of the Supreme Court of the State of North
34 Dakota, and if said R. E. Flaherty shall at all times hold himself amenable to and abide by all or any orders made or entered in said proceeding by the Supreme Court of the United States, then this obligation shall be void, otherwise to be and remain in full force and effect.

R. E. FLAHERTY,
(Signed) By ENGERUD, HOLT & FRAME,
His Attorneys.
(Signed) H. P. PORTERFIELD.
(Signed) ADDISON LEECH.

STATE OF NORTH DAKOTA,
County of Cass, ss:

On this 24th day of October, 1907, before me, the undersigned Notary Public, personally appeared Edward Engerud, one of the firm of Engerud, Holt & Frame, to me known to be the attorneys for the above bounden R. E. Flaherty, and acknowledged that he executed the foregoing Bond in behalf of said R. E. Flaherty as a member of the firm of Engerud, Holt & Frame; and at the same time and place appeared before me W. P. Porterfield and Addison

Leech to me known to be the sureties described in and who executed the foregoing Bond and they severally acknowledged that they executed the same.

[NOTARIAL SEAL.] (Signed) JOHN S. FRAME,
Notary Public, Cass County, N. Dak.

My Commission expires July 9, 1908.

STATE OF NORTH DAKOTA,
County of Cass, ss:

W. P. Porterfield and Addison Leech being each first duly sworn state on oath, each for himself, that he is a resident and freeholder of the County of Cass in the State of North Dakota, and is worth more than the sum of Five Hundred Dollars ($500) in property in the State of North Dakota, over and above all debts and lia-
35 bilities and exclusive of property exempt from execution.

(Signed) W. P. PORTERFIELD.
(Signed) ADDISON LEECH.

Sworn to and subscribed before me this 24th day of October, 1907.

[NOTARIAL SEAL.] (Signed) JOHN S. FRAME,
Notary Public, Cass County, N. Dak.

My Commission expires July 9, 1908.

The foregoing bond and the sureties thereon is hereby approved Oct. 26, 1907.

(Signed) D. E. MORGAN,
Chief Justice of the Supreme Court of the State of North Dakota.

36 In the Supreme Court of the State of North Dakota.

STATE OF NORTH DAKOTA *ex Rel.* R. E. FLAHERTY, Plaintiff in Error,
vs.
O. G. HANSON, as Sheriff of the County of Grand Forks, in the State of North Dakota, Defendant.

Bond.

Know all men by these presents, That we, R. E. Flaherty, as principal and W. P. Porterfield and Addison Leech, as sureties, are held and firmly bound unto O. G. Hanson, as Sheriff of the County of Grand Forks in the State of North Dakota, in the sum of Five Hundred Dollars ($500) to be paid to the said obligee, his successors, representatives or assigns, to the payment of which sum well and truly to be made, we bind ourselves, and each of our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals and dated this 24th day of October, 1907.

Whereas, the above named Plaintiff in Error has prosecuted a Writ of Error in the Supreme Court of the United States to reverse the judgment rendered in the above entitled proceeding by the Supreme Court of the State of North Dakota,

Now, therefore, the condition of this obligation is such that if the above named plaintiff in error shall prosecute said Writ of Error to effect, and answer all costs and damages if he shall fail to make good his plea, then this obligation shall be void, otherwise to remain in full force and effect.

R. E. FLAHERTY,
(Signed) By ENGERUD, HOLT & FRAME,
His Attorneys.
(Signed) W. P. PORTERFIELD.
(Signed) ADDISON LEECH.

37 STATE OF NORTH DAKOTA,
County of Cass, ss:

On this 24th day of October, 1907, before me, the undersigned Notary Public, personally appeared Edward Engerud, one of the firm of Engerud, Holt & Frame to me known to be the attorneys for the above bounden R. E. Flaherty, and acknowledged that he executed the foregoing Bond in behalf of said R. E. Flaherty as a member of the firm of Engerud, Holt & Frame; and at the same time and place appeared before me W. P. Porterfield and Addison Leech to me known to be the sureties described in and who executed the foregoing Bond and they severally acknowledged that they executed the same.

[NOTARIAL SEAL.] (Signed) JOHN S. FRAME,
Notary Public, Cass County, N. Dak.

My commission expires July 9, 1908.

STATE OF NORTH DAKOTA,
County of Cass, ss:

W. P. Porterfield and Addison Leech, being each first duly sworn state on oath, each for himself, that he is a resident and freeholder of the County of Cass, in the State of North Dakota, and is worth more than the sum of Five Hundred Dollars ($500) in property in the State of North Dakota, over and above all debts and liabilities and exclusive of property exempt from execution.

(Signed) W. P. PORTERFIELD.
(Signed) ADDISON LEECH.

Sworn to and subscribed before me this 24th day of October, 1907.

[NOTARIAL SEAL.] (Signed) JOHN S. FRAME,
Notary Public, Cass County, N. Dak.

My Commission expires July 9, 1908.

The foregoing bond and sureties are hereby approved Oct. 26, 1907.

(Signed) D. E. MORGAN,
Chief Justice, Supreme Court, State of North Dakota.

(Endorsed:) *In re* Flaherty. Bond for Costs and Bond for Bail. 1667. Filed in the Clerk's Office, Supreme Court, N. Dak. Oct. 30, 1907. R. D. Hoskins, Clerk.

38 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to O. G. Hanson, as Sheriff of the County of Grand Forks in the State of North Dakota and to J. B. Wineman, his attorney:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States at Washington within Sixty days from the date hereof, pursuant to a Writ of Error filed in the Office of the Clerk of the Supreme Court in the State of North Dakota, wherein the State of North Dakota, *ex rel.* R. E. Flaherty is Plaintiff in Error and said O. G. Hanson as Sheriff of Grand Forks County in the State of North Dakota is Defendant in Error, to show cause, if any there be, why the judgment rendered against the said Plaintiff in Error, as in said Writ of Error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable D. E. Morgan, Chief Justice of the Supreme Court of the State of North Dakota, this 26th day of October, in the Year of our Lord One Thousand Nine Hundred and Seven.

(Signed) D. E. MORGAN,
Chief Justice of the Supreme Court of the State of North Dakota.

Attest:
(Signed) R. D. HOSKINS, *Clerk.*

[Seal of the Supreme Court of the State of North Dakota.]

Service of the annexed Citation in the matter of State of North Dakota, *ex rel.* R. E. Flaherty, plaintiff in error *vs.* O. G. Hanson as Sheriff of Grand Forks County pending a Writ of Error from the United States Supreme Court is hereby admitted to have been made at Grand Forks, North Dakota, this 31st day of October,
39 1907, and service of a copy of the Writ of Error, Petition for Writ of Error, Assignments of Error, Order allowing the Writ of Error, Cost Bond and Bail Bond is also acknowledged.

(Signed) J. B. WINEMAN,
Attorney for Defendant in Error.

(Signed) O. G. HANSON,
Defendant in Error.

(Endorsed:) *In re* Flaherty. Citation. 1667. Filed in the Clerk's Office, Supreme Court, N. Dak., Nov. 12, 1907. R. D. Hoskins, Clerk.

Endorsed on cover: File No. 20,953. North Dakota supreme court. Term No. 235. The State of North Dakota *ex rel.* R. E. Flaherty, plaintiff in error, *vs.* O. G. Hanson, sheriff of the county of Grand Forks, State of North Dakota. Filed December 31st, 1907. File No. 20,953.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1908.

Office Supreme Court, U. S.
FILED.
APR 17 1909
JAMES H. McKENNEY,
Clerk.

No. [illegible]47.

STATE OF NORTH DAKOTA, ex rel. E. E. FLAHERTY,

Plaintiff in Error,

vs.

O. G. HANSON, SHERIFF OF THE COUNTY OF GRAND FORKS, STATE OF NORTH DAKOTA,

Defendant in Error.

BRIEF FOR PLAINTIFF IN ERROR.

EDWARD ENGERUD,
Attorney for Appellant.

Of Counsel:
DANIEL H. [illegible]
BOYD [illegible]
GEO. [illegible]

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

No. 235

STATE OF NORTH DAKOTA, ex rel, R. E. FLAHERTY,

Plaintiff in Error.

vs.

O. G. HANSON, SHERIFF OF THE COUNTY OF GRAND FORKS, STATE OF NORTH DAKOTA,

Defendant in Error.

BRIEF OF PLAINTIFF IN ERROR.

WALKER BROS. & HARDY, FARGO, N. D.

STATEMENT OF FACTS.

Prior to the commencement of these proceedings in the State Courts of North Dakota, appellant paid to the United States Government the special tax imposed by the federal laws for carrying on the business of a retail dealer in distilled, malt and fermented liquors as required by Section 4 of the Act of March 1, 1879, Ch. 125, 20 Stat. L. 333 and received the regular receipt therefor which expired on the 30th of June, 1908 (Record folio 8.)

On the 5th day of August, 1907, the State's Attorney for Grand Forks County, North Dakota, filed a Complaint in Justice Court in said County charging appellant with having said special tax receipt in his possession and with having failed to publish in the official newspapers of said County a notice to the effect that such tax receipt had been issued to him, as was required by Chapter 189, Laws of 1907, approved March 13, 1907 (Record folio 8.)

Thereafter such proceedings were had that an order was made committing appelant to the custody of the Sheriff of Grand Forks County, who was commanded to keep him confined until he was legally discharged (Record folio 7), and appellant was delivered over to the custody of said Sheriff (Record folio 5).

Thereupon application was made to the Judge of the District Court of the District within which said Grand Forks County is situated for a Writ of Habeas Corpus to determine the lawfulness of said imprisonment, which application was denied by said District Court (Record folio 6).

Thereupon and on March 20, 1907, in accordance with the practice in such cases in the State of North Dakota (Carruth v. Taylor, 8 N. D. 166) appellant applied to the Supreme Court of the State of North Dakota for a Writ of Habeas Corpus for the purpose of inquiring into and determining the lawfulness of said imprisonment.

On the 20th day of March, 1907, the petition for said writ was granted, and an order was made commanding the Sheriff of said County to produce the body of appellant forthwith. (Record folio 10). Appellant was admitted to bail in the sum of $500.00, bond was furnished which was approved by the Court, and appellant was set at liberty pending the hearing and final determination of this action. (Record folios 12 to 15).

Thereafter, and on October 15, 1907, the Supreme Court of said State made an order quashing the Writ of Habeas Corpus theretofore issued by it, and remanding appellant to the custody of the Sheriff of said Grand Forks County to

be held according to the terms of the original commitment (Record folio 17), and filed a memorandum of opinion which is incorporated in the record on this appeal. (Record folios 18 to 28).

Thereupon the present Writ of Error was sued out to review the decision of the Supreme Court of said State.

The law under which appellant was prosecuted, and which this Court is asked to pass upon, is Chapter 189 of the General Laws of the State of North Dakota for 1907 and reads as follows:

"An Act Providing for the Publication and Registration of Special Tax Receipts or Licenses from the Government of the United States to Sell Distilled, Malt and Fermented Liquors, Issued to Persons in North Dakota, the Payment and Collection of Registration Fees and Publication Fees, Regulating the Posting and Exhibiting of Such Tax Receipts or Licenses, Prescribing the duties of Officials and Owners and Lessors of Property in Relation Thereto, Prescribing Penalties for Failure to Perform the Duties Prescribed and Other Regulations Pertaining to the Sale of Intoxicating Liquors.

Be it Enacted by the Legislative Assembly of the State of North Dakota:

SEC. 1. LIQUOR LICENSE. TAX RECEIPT MUST BE REGISTERED.) Every receipt, stamp or license showing payment of the special tax levied under the laws of the United States upon the business of selling distilled, malt or fermented liquor, issued to or held by any person, firm or corporation in this State shall be registered and published as in this Act required.

SEC. 2. NOTICE TO BE PUBLISHED. CONTAINS WHAT.) Immediately upon posting or displaying the special tax receipt or license mentioned in said section 1 of this act as required under government regulations, it shall be the duty of the person in whose name such tax receipt or license is issued, to cause to be published for three successive weeks in the official newspapers of the County and for the same period in the official newspaper of the City, if within an incorporated city, a notice which shall contain the following information: Name of person to whom the Government tax receipt or license is issued; date of special tax receipt or license; description of property where said tax receipt or license is posted, and, if within an incorporated city, the number of the lot and block and street number and setting forth specifically the room, building or place where said tax receipt or license is posted; the name of the owner and the name of the lessor of the property in which said tax receipt or license is posted. Upon discontinuance of business or removal of the

special tax receipt or license mentioned in section 1 of this act to another building or place, a similar notice containing the information prescribed in this section, shall be published in the same manner prescribed herein, and setting forth further the fact of removal, giving date and description of place to which such removal is made as fully as in the original notice.

SEC. 3. COPY OF RECEIPT FILED WITH AUDITOR.) It shall be the further duty of any person to whom a tax receipt or license from the government of the United States is issued, as mentioned in Section 1 of this act, to file a duly authenticated copy of the same before or immediately upon posting, if in an incorporated city with the City Auditor, otherwise with the County Auditor of the County and pay a fee for the filing thereof of ten dollars, which fee shall be turned into the general fund of the city or county as the case may be.

SEC. 4. AUDITOR PUBLISHES LIST OF LICENSES.) The City Auditor, if in an incorporated city, or county auditor, if not within an incorporated city, shall be required to publish in the official newspaper of the city and each of the official newspapers of the county the first week in each month a list of all such tax receipts or licenses filed during the previous month, such notice to be published one week in each newspaper.

SEC. 5. FEES FOR PUBLICATION. COPY POSTED.) The fee for publication of notices required under this act shall be the same as allowed by law for publication of other legal notices and the publisher may require the fee for such publication to be paid in advance. Upon the expiration of the publication required by this act the publisher or manager of the newspaper in which said notice is published shall make an affidavit of publication with a copy of the advertisement attached thereto, together with the copy of notice or advertisement referred to herein shall be posted and remain posted at all times with the tax receipt or license referred to in Section 1 of this act.

SEC. 6. OWNER OF PREMISES MUST PUBLISH, WHEN, PENALTY FOR FAILURE.) In case the person to whom the tax receipt or license referred to in section 1 of this act shall be issued, shall fail to cause to be published the notice required by this act, it shall be the duty of the owner or lessor of the premises whereon or wherein the tax receipt or license from the Government of the United States referred to in section 1 of this act shall be posted, to cause such advertisement to be published as in this act required

and if such owner or lessor shall knowingly fail to do so he shall be guilty of a misdemeanor.

SEC. 7. DUTY OF OFFICERS.) It shall be the duty of every sheriff, deputy sheriff, constable, mayor, marshal, police judge and police officer of any city or town having knowledge of any violation of the provisions of this act to notify the State's Attorney of the fact of such violation and to furnish him the names of any witnesses within his knowledge by whom such violation can be proven. If any such officer shall fail to comply with the provisions of this section he shall be guilty of a misdemeanor and upon conviction, in addition to the punishment therefor prescribed by law, shall forfeit his office. For failure or neglect of official duty in the enforcement of this act any of the city or county officers herein referred to may be removed by civil action.

SEC. 8. DUTY OF COUNTY AUDITOR.) It shall be the duty of the county auditor of each county to apply to the internal revenue department of the Government of the United States the first week in each month for a list of all special tax receipts or licenses mentioned in section 1 of this act issued to persons within his County, naming the persons, date and places, and the same shall be immediately published one week in each of the official newspapers of the county and city. The cost of procuring such information, upon filing of a duly verified voucher, shall be paid by the county as other county expenses are paid.

SEC. 9. PENALTY.) Failure on the part of any person to comply with the provisions of this act shall constitute a misdemeanor.

SEC. 10. EMERGENCY.) Whereas, it is desirable that the publicity required by this act shall begin as soon as possible, an emergency exists and this act shall be in force from and after its passage and approval.

Approved March 13, 1907.

ASSIGNMENTS OF ERROR.

The Supreme Court of the State of North Dakota in quashing the Writ of Habeas Corpus, and in remanding appellant to the custody of the Sheriff of Grand Forks County for commitment erred in this:

First: In holding and deciding that the provisions of Chapter 189 of the General Laws of 1907 of the State of North Dakota were enactments made in the proper exercise of the police power of said State of North Dakota.

Second: In holding that the provisions of said Act of the North Dakota Legislature do not add to, interfere with

or supplement the regulations of Congress in the matter of taxing dealers in malt, distilled or fermented liquors, and is not therefore violative of Article Six (6) of the Federal Constitution which declares that the Constitution of the United States and the Laws of Congress made in pursuance thereof are the Supreme laws of the land.

ARGUMENT.

The Act complained of, Chapter 189 of the Laws of 1907 of the State of North Dakota, is not a regulation of the business of selling malt, distilled and fermented liquors.

If the act in question can be upheld as valid, it must be, we think, because it is a regulation of the business of dealing in malt, distilled and fermented liquors. It was upon this ground that the Supreme Court of North Dakota sustained the law, and it was to the demonstration of this thesis that the Court of the State addressed most of its arguments. There is no doubt that the State might by appropriate legislation regulate the sale of those liquors within its borders. That right is expressly given to the State by the Act of July 13th, 1866, Chapter 184, 14 Stat. L. 122. But does the act in fact regulate that business. We contend that it does not, and that the State Court committed error in holding that it did.

In support of our position we respectfully invite the attention of the Court to the following considerations:

First: The Act does not by its terms purport to regulate the business of dealing in malt and other liquors.

Second: The Act does not apply to all persons who deal in malt and spirituous liquors within the borders of the State of North Dakota because

a. It affects only those persons dealing in such liquors who have paid the Federal Government Tax, and

b. It affects only such of the persons who have paid the federal tax as have obeyed the Federal statute and posted the tax receipt issued by the Federal Government.

Third: The Act compels the State Courts to look to the Federal Statutes and the Federal Courts, and not to the Act itself, to determine who are engaged in the business of selling malt and spirituous liquors, and what constitutes doing that business, within the meaning of the *State* law.

First.

That the Act complained of does not upon its face purport to regulate the business of dealing in malt and spirituous liquors must we think be apparent upon even a hasty ex-

amination of it. Its title reads as follows: "An Act Relating to the Publication and Registration of Special Tax Receipts or Licenses from the Government of the United States to Sell Distilled, Malt and Fermented Liquors issued to Persons in North Dakota, the Payment and Collection of Registration Fees and Publication Fees, Regulating the Posting and Exhibiting of Such Tax Receipts or Licenses, Prescribing the Duties of Officials and Owners and Lessors of Property in Relation Thereto, Prescribing Penalties for Failure to Perform the Duties Prescribed, and Other Regulations Pertaining to the Sale of Intoxicating Liquors."

An examination of the body of the Act shows that Section One provides that every receipt issued by the Federal Government showing the payment of a special tax upon the business of selling malt, distilled and fermented liquors shall be registered and published as thereinafter required. Section Two provides that the holder of such receipt shall immediately on posting or displaying it as required by the Federal laws, publish a notice in each of the official papers of the County and City stating the name of the person to whom the receipt was issued, the date of the receipt, the description of the premises where it is posted, and certain other specified facts. Section 3 makes it the duty of the holder to file a duly authenticated copy of the receipt with the County Auditor, and pay a filing fee of Ten Dollars. Section 4 directs the County or City Auditor to publish in the official papers the first of each month all such receipts filed with him during the preceding month. Section 5 fixes the fees for the publication of such notices. Section 6 makes it the duty of the owner of the premises to publish the notice required by Section 2 in case the holder of the receipt does not do so, and fixes a penalty for failure to observe this requirement. Section 7 commands the police officers of the State, County and City to notify the State's Attorney of any violation of the provisions of the Act known to them, and imposes a penalty for failure to perform this duty. Section 8 requires the County Auditor to apply each month to the Federal Internal Revenue officer for a list of all such receipts issued by him, and directs him to publish the same. Section 9 makes it a misdemeanor for any person to fail to comply with the provisions of the Act. And Section 10 puts the Act in force immediately upon its approval.

From the synopsis of the Act it is manifest that the legislature carefully obeyed Section 61 of the State Constitution which directs that "No bill shall embrace more than one subject which shall be expressed in its title," for the body of the Act treats of no subject not expressed in the title, and the title is seen to be an elaborate digest of the

body of the Act. In neither the title nor the body of the Act is there a word or sentence which is not referred to in the other part unless we except the last clause of the title, "And other regulations pertaining to the sale of intoxicating liquors." But this clause must, we think, be treated as surplusage and be disregarded for two reasons: first, because it is not in harmony with the theory and spirit of the Act, since some of the liquors referred to in it are not intoxicating; and second, because the body of the Act contains no other regulations" to which it could apply.

What then is the subject matter of the Act?

To determine this we must look to the language used by the law making body and give to it, if possible, its plain and ordinary meaning.

A careful examination of the Act will show that in every section of it the thing dealt with is the receipt issued by the Federal Government to the person who has paid the Federal tax. Its commands all relate to registering and publishing those receipts, and its penalties are all imposed for the evident purpose of compelling such registration and publication. No where does the Act prohibit or place restrictions upon the sale of malt or spirituous liquors. How then can it be said that the regulation of the business of selling such liquors is the subject matter of the Act?

But it was argued and decided by the Supreme Court of the State that effect must be given to the intent of the legislative body, and that the object and purpose of the law was to aid in the better enforcement of the State statutes regulating the sale of intoxicating liquors. The rule that effect must be given to the intent of the legislature is elementary, but that intent must be gathered from the words and language of the statute itself. Where the language used is clear and unambiguous a bare reading of the Act will suffice, and it will be the duty of the Court to give effect to the words used according to their usual and obvious meaning. The Court must not in such case speculate on the intention of the legislature. The legislature having spoken in clear and unambiguous terms must be taken to have intended exactly what it said. To hold otherwise would result in allowing Courts to imagine an intent, and to twist the language of the Act so as to express that intent, and so to substitute for the will of the law making body their own notions of what the law ought to have been.

Ruggles vs. Illinois, 108 U. S. 526.
U. S. vs. Fisher, 2 Cranch 358.
U. S. vs. Wiltberger, 5 Wheat. 95.
U. S. Hartwell, 6 Wall. 395.

This rule the State Court has not followed. It has given to the language of the statute, which is plain and unambiguous, a meaning which does not naturally and obviously suggest itself. It has conceived a purpose for the legislation, and without warrant from the language of the statute imputed that purpose to the legislature. It has, therefore, we believe, done an act which was entirely unwarranted by the circumstances, and which is without the support of authority.

We conclude therefore that because the language is not apt for that purpose, the Act does not purport to regulate the business of dealing in malt and other liquors.

Second:

A. The Act does not regulate the liquor business because it does not apply to all persons in the State of North Dakota who engage therein. The portions of the Act defining the duties of persons engaged in that business are Section One (1), Two (2) and Three (3). An inspection of those provisions will show that the law is expressly limited to those persons who have paid the Federal Government tax and have a receipt therefor. It by no means follows that all persons who sell malt or intoxicating liquors will pay that tax. The records of the Federal Courts show that large numbers of them do not. Some who do not are wilful violators of the law, and some, those for instance who sell non-intoxicating malt compounds, are unconscious of their obligations to the Federal Government. These people may do a very considerable business within the State, but they are entirely exempt from the operation of the law for the simple but sufficient reason that they do not have the document which the law says must be filed and published. They may sell their goods as freely as they please and in doing so they will commit no offense under the statute, for the offense is not the sale of liquors, but the failure to file and publish the tax receipt.

Again a person may pay the Federal tax and take a receipt, but never sell any of the liquors on which he has paid the tax. Such a person cannot be said to be engaged in the business of selling such liquors, yet if he posts his receipt he thereby brings himself within the provisions of this Act. It is no reply to say that the possession of the receipt is prima facie evidence that the holder is engaged in the business of selling liquors. Prior to the passage of this Act he might show that he was not in fact making such sales and so place himself outside the operation of the State laws regulating the business. But under the Act in question all such evidence is immaterial. If he simply has the receipt and posts

it, he becomes by those facts alone liable to the penalties of the Act. In a word the Act is thus made to regulate both those who are engaged in the business of selling liquors, and those who are not.

B. But not even all those who pay the Federal tax and have a receipt are covered by this Act. Section Two says a person having a receipt shall immediately on posting it as required by the Federal regulations publish it in the official newspapers of his City and County; and Section Three says that he shall before or immediately after such posting file an authenticated copy of it with the Auditor of his County or City. The State Court was not correct in saying that Section One of the Act required all such receipts issued by the Government to be published and registered. That section only directs that the receipts shall be published and registered "as in this Act required," and as we have seen the Act in its subsequent sections requires them to be registered and published only when posted in accordance with the Government regulations.

The careless or willful failure of the holders of such tax receipts to post them in accordance with the Federal law, would seem to create a class of persons not covered by the provisions of this Act. And when we consider the large expense which one must necessarily incur in complying with the provisions of the Act, it can easily be seen that this class may be a large one. Moreover the persons comprising this class may all be actually engaged in selling the liquors for which they have paid the tax, and that traffic would be free from any regulation by this Act.

The mere statement of such considerations as the foregoing show the absurdity of the contention that the act is one regulating the business of selling malt and other liquors; and at the same time, if the contention is to be adopted, it convicts the State legislature of making unreasonable and absurd discriminations in favor of violators of the Federal Statutes.

Third:

But perhaps the most persuasive argument in support of our thesis is that the Act deprives the State Court of the power to decide, and the citizens of the State of the right to have State Court and jury pass upon the question as to who are liquor dealers within the meaning of the State law.

An examination of the Act, and a consideration of the consequences resulting from an application of its provisions, will make this very apparent. By its express terms it af-

fects only those liquor dealers who obey the federal law and post their receipts. In order to secure a conviction under the Act on a charge of selling intoxicating liquors it will be necessary to allege in the Complaint, and prove at the trial, that the accused had a federal tax receipt which he had not published and registered, without such allegation and proof a conviction would not be possible even though the State should conclusively show that the accused was as a matter of fact selling those liquors. And this is so because the fact that the accused was engaged in the business does not make it necessary under the Act to publish the receipt.

The incriminating facts under the Statute are the possession of a federal tax receipt and the failure to register and publish it.

It follows from this that we must look to the federal statutes to see who is engaged in the liquor business, and that only such persons as are engaged in it under the meaning of the Federal law can be brought under the operation of this State law. If Congress should change its definition of "dealers in liquor" so as to enlarge or diminish the class it would by that Act to an equivalent degree extend or narrow the scope of this law. If Congress should by an act exempt a certain class of persons from the operation of its revenue laws, it would by that Act place those persons outside the operation of this law even though the business carried on by them was in direct violation of the prohibition laws and general policy of the State. If Congress should entirely repeal its revenue law, it would thereby nullify and practically repeal this law. In short, the law will remain in force so long as, and the State can regulate the business under it only to the extent that Congress see fit to tax.

The following illustrations will still further show the unreasonableness of the claim that the Act is one regulating the liquor business.

Suppose the State should adopt a law taxing and regulating the business of dealing in malt and other liquors without expressly repealing the Act in question. Then all whom the State authorities decided were engaged in the business so taxed and regulated whether they had paid the federal tax or not, would come under the operation of that law; but those persons who were in that business, and had paid the federal tax, would have to bear the extra burden of this law for no other reason than that they had paid the Government tax.

Again suppose a person was engaged in the liquor business and had not paid the federal tax, and the federal authorities should prosecute him for such failure. He might

be acquitted by the federal jury for lack of evidence, or in spite of it. The State authorities might have conclusive evidence that he was in the liquor business, yet he would not be amenable to this law because the Federal Courts had held him not liable to pay the tax.

Again suppose a person who was not engaged in this business was prosecuted by the Federal Court and was convicted by a Federal jury. This conviction would make him liable to pay the tax. If he paid it and posted his receipt he would become amenable to this State law. But he could not demand that the question whether he was or was not engaged in the business, which is the very thing which it is claimed this Act regulates, be submitted to and tried by the State Judges, in the State Courts, before a State jury empanelled and instructed in accordance with State law.

The statute is manifestly an attempt by the legislature to exercise the police power inherent in the State, and it was enacted presumably in furtherance of the settled policy of the State with reference to the sale of intoxicating liquors. The questions arising under it are therefore purely State and local, and such as concern the citizens of the State only with reference to their State rights and duties. Yet it results from the foregoing considerations that this purely State law cannot be enforced or interpreted without first referring to the Federal Statutes, and the decisions of the Federal Courts construing those statutes; and the rulings of a federal judge and the findings of a federal jury on a trial had under a Federal statute conducted according to Federal procedure, are thus made to conclusively and exclusively establish the duty of a citizen to his State under this law.

If the law is a valid exercise of the police power then the State has by it surrendered its right to define and punish a particular class of crimes committed within its borders; it has surrendered its right to enforce its settled public policy upon a question vitally affecting the public peace, and the health and welfare of its citizens; and it has consented to exercise its sovereign powers over these matters only to the extent that another and independent sovereign power may legislate. The bare statement of these propositions carries with it a refutation, for it is intolerable that a sovereignty independent as respects the subject matter dealt with should be subject to the control and direction of any other power whatever. Such a situation is wholly foreign and unknown to our form of Government.

Butchers Union vs. Crescent City 111 U. S. 746.
Ableman vs. Booth, 21 How. 506.
U. S. vs. Tarble 13 Wall. 397.

Cooley Const. Lim. 399.
Thorpe vs. R. R. 27 Vt. 140.

II.

The Act is an unlawful interference with Federal regulations.

The fact that the State legislature intended by the law in question to make the enforcement of the prohibition laws of the State more easy and certain cannot save it if in truth it interferes in any manner with a subject over which the Federal Government has control. This was decided in the case of

Bowman vs. Chicago, etc., 125 U. S. 475.

There the State of Iowa passed a law requiring all railroads transporting intoxicating liquors into the State, and from point to point within it, to secure a certificate from the County Auditor of the County where the consignee lived stating that the consignee had been licensed by the State to sell intoxicating liquors. The Court said "Although the motive and purpose of the Act are to perfect the policy of the State of Iowa in protecting its citizens against the evils of intemperance, it is none the less on that account a regulation of commerce" and is therefore void.

The rule was re-affirmed in the case

Rhodes vs. Iowa 170 U. S. 412.

We believe that the Act in question comes within the rule laid down in the Bowman case for the reason that here, as there, an attempt is made to legislate upon a subject within the exclusive jurisdiction of the Federal Government.

There can be no question made of the right of Congress to raise revenue for the maintenance of the Federal Government by taxing those who engage in the sale of malt and other liquors, and it is equally within the power of Congress to prescribe the conditions under which that tax shall be paid, and the notice which the person paying it shall give to the public of the fact of such payment.

It is true that the State is not prohibited from also taxing the persons who engage in that business because of the fact that Congress has seen fit to tax them; but it by no

means follows that because Congress has seen fit to tax those persons, the State may step in and make that fact the occasion and reason for laying upon those same persons certain duties and obligations which are different from, and in addition to, the duties imposed by Congress. But this is exactly what the State has attempted to do by this legislation. Congress has said that all persons selling malt and other liquors shall pay a certain tax, (Section 3242 R. S.) and shall post in a conspicuous place in the building where they carry on their business the tax receipt issued to them by the Federal authorities; and shall pay certain penalties for failing to do so (Section 3239 R. S.). The State in substance and effect has said that this Federal regulation with respect to the posting of the receipt does not give sufficient notice of its possession, and has added certain regulations of its own to give effect to its own ideas upon the subject of publicity, and has likewise imposed certain penalties in addition to those imposed by Congress.

This the State had no right to do because it made the basis of its legislation an instrumentality used by the Federal Government in the exercise of its sovereign powers, and because it was dealing with its citizens upon a subject with respect to which they owed the State no duty, and which concerned them solely in their transactions with and relation to the Federal Government. The State thus stepped outside its legitimate sphere of action and meddled in a matter which is peculiarly and solely within the power of Congress to regulate.

The powers of the Federal Government and the State Government, although they both exist and are exercised within the same territorial limits, are yet separate and distinct sovereignties acting separately and independently of each other within their respective spheres; and the sphere of action delegated to the Federal Government is as far beyond the reach of the regulation of the State laws, as is the sphere of action reserved by the States beyond the control or interference of the federal laws.

As was said by this Court "The sovereignty of a State extends to everything which exists by its own authority or is introduced by its permission, but does not extend to those means which are employed by Congress to carry into execution powers conferred on that body by the people of the United States."

McCulloch vs. Md. 4 Wheat. 316.

The question of the right of a State to legislate upon

matters within the jurisdiction of Congress was before the Court in the case of

Prigg vs. Pennsylvania, 16 Peters 539.

where the Court said: "If Congress have the constitutional power to regulate a particular subject, and they do actually regulate it in a given manner, and in a certain form, it cannot be that the State legislatures have a right to interfere and as it were by way of complement to supplement the legislation of Congress, to prescribe additional regulations and what they may deem auxiliary provisions for the same purpose. In such cases the legislation of Congress in what it does prescribe manifestly indicates that it does not intend that there shall be any further legislation to act upon the subject matter. Its silence as to what it does not do is as expressive of what its intention is as the direct provisions made by it."

And again in the case of

Houston vs. Moore, 5 Wheat. 1.

The Court said: "But Congress has provided for all these subjects in the way which that body must have supposed the best calculated to promote the general welfare and to provide for the national defense. After this can the State Governments enter upon the same ground, provide for the same objects as they think proper, and punish in their own way violations of the laws they have so enacted? The affirmative of this question is asserted by the defendant's counsel who, it is understood, contend that unless such State laws are in direct contradiction of those of the United States, they are not repugnant to the constitution of the United States. From this doctrine I must for one be permitted to dissent. The two laws may not be in such absolute opposition to each other as to render the one incapable of execution without violating the injunctions of the other, and yet the will of one legislature may be in direct collision with the other. This will is to be discovered as well by what the legislature has not declared, as by what they have expressed. Congress for example has declared that the punishment for disobedience of the Act of Congress shall be a certain fine, if that provided by the State legislature for the same offense be a similar fine with the addition of imprisonment or death, the latter law would not protect the former from being carried into

execution, and may be said therefore not to be repugnant to it. But surely the will of Congress is nevertheless thwarted and opposed. The question does not so much involve a contest for power between the two Governments as the rights and privileges of the citizens secured to him by the Constitution of the United States. the benefit of which he may lawfully claim. If in a specified case the people have thought proper to bestow certain powers on Congress as the safest depositary of them, and Congress has legislated within those powers the people have reason to complain that the same powers should be exercised at the same time by the State legislature. To subject them to the operation of two laws upon the same subject, dictated by distinct wills, particularly in a case inflicting pains and penalties, is to my apprehension something like oppression if not worse. In short I am altogether incapable of comprehending how two distinct wills can at the same time be exercised in relation to the same subject, and be effectual and at the same time compatible with each other. If they correspond in every particular then the latter is idle and inoperative; if they differ, they must in the nature of things oppose each other so far as they differ. If one imposes a certain punishment for a certain offense, the presumption is that this is deemed sufficient under all the circumstances. If the other legislature imposes a different punishment in kind or degree I am at a loss to conceive how they can both exist harmoniously together."

To the same effect are

Farmers, etc. Bank vs. Dearing, 91 U. S. 29.
Easton vs. Iowa, 188 U. S. 220.
Ohio vs. Thomas, 73 U. S. 276.
Sturgis vs. Crowninshield, 4 Wheat. 122.
McCulloch vs. Maryland, 4 Wheat. 316.
Patterson vs. Kentucky, 97 U. S. 501.
Webber vs. Virginia, 103 U. S. 344.
Commonwealth vs. Petty, 29 S. W. 291.
Cranson vs. Smith, 37 Mich. 309.
Hollida vs. Hunt, 70 Ill. 109.
Commonwealth vs. Felton, 101 Mass. 204.
Crittenden vs. White, 23 Minn. 24.
People vs. Kennedy, 38 Cal. 147.
State vs. Pike, 15 N. H. 83.

But besides being an unwarranted usurpation of authority over transactions and relations between the Federal Government and its citizens, the Act interferes with and impedes the operations of the Federal laws relating to internal rev-

enue. This will be apparent upon a consideration of its various provisions as compared with the Federal revenue laws.

The Federal laws impose as a penalty for failing to post the tax receipt a fine not less than ten dollars, and not more than twice the amount of the receipt and the costs of prosecution in case prosecution results. Section 3239 R. S. If one be a dealer in malt liquors this fine may be not less than Ten Dollars, and not more than Forty Dollars. But under the State law if he posts his Federal receipt he must at once pay the Auditor of his County or City a fee of Ten Dollars (Sec. 3 of Act), and pay for the publication of it in all the official newspapers of his County and City, and this expense he must incur as often as he changes his place of business. (Sec. 2 of Act). This outlay cannot be less than Twenty Dollars, and may amount to Sixty or Seventy Dollars or even more.

Is it not plain that the direct and necessary tendency, if not effect of this Act is to induce persons to violate the Federal Statutes; and is it not plain that willful violators of the State prohibition law, rather than publish to the world the evidence of their guilt under the prohibition law, will deliberately chose to incur the comparatively mild penalties of the Federal Law in preference to the severe ones of the State law?

A further consequence of this Act is that many who pay the Federal Tax will be deterred from doing so because of the odium attendant upon a publication to the world of the facts made necessary by this law, with the result that the Federal Government will be deprived of a portion of its revenues. If this Act were a proper exercise of the police power by the State, this argument would not apply, because a State may regulate the sale of articles paying a Government tax even if it result in a diminution of the sale, and a consequent loss of revenue to the Federal Government. But this case is to be distinguished for here the tax is not upon the article sold, nor upon the person because he makes the sale, but upon the person because he has discharged his duty to the Federal Government with respect to a matter of purely Federal concern.

The natural and as we think inevitable consequence of the foregoing considerations is that a person who has paid the Federal tax has a right to look to the Federal Government alone for a statement of his duties with respect thereto, and if he has done all that the Federal laws require he has done his full duty. If this is so, then the State has no power

to lay extra burdens and impose extra duties upon him, and make his failure to perform them a crime.

Respectfully submitted,

EDWARD ENGERUD,
Attorney for Appellant.

Of Counsel:
DANIEL B. HOLT,
JOHN S. FRAME,
GEORGE A. BANGS.